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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9

10 MELISSA TETREAULT,

11                   Plaintiff,

12                   v.

13                   THE STANDARD INSURANCE  
14                   COMPANY, an Oregon corporation,

15                   Defendant.

16                   Case No. CV-17-00540-RSL

17  
18                   FIRST AMENDED STIPULATED  
19                   PROTECTIVE ORDER

20                   The Parties agree to amend the previous stipulated protective order to include an additional  
21 category of document. Amendments are in bold and contained in section 2, below.

22                   1. PURPOSES AND LIMITATIONS

23                   Discovery in this action is likely to involve production of confidential, proprietary, or  
24 private information for which special protection may be warranted. Accordingly, the parties hereby  
25 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
26 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
protection on all disclosures or responses to discovery, the protection it affords from public  
disclosure and use extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
2 confidential information under seal.

3 2. **"CONFIDENTIAL" MATERIAL**

4 "Confidential" material shall include the following documents and tangible things  
5 produced or otherwise exchanged: [The parties must include a list of specific documents such as  
6 "company's customer list" or "plaintiff's medical records;" do not list broad categories of  
7 documents such as "sensitive business material"].

8 Claims manuals or similar documents by any other name, as they are proprietary  
9 business trade secrets; Training materials, as they are proprietary business trade  
10 secrets; Employee compensation plan information, as it is is proprietary business  
11 trade secrets and its production potentially invades the privacy of third parties;  
12 Employee personnel file documents to the extent they are held to be relevant and  
13 discoverable by this Court, as the production of any such documents would invade  
14 the privacy of third parties to this action.

15 Plaintiff's private Facebook Messenger conversations, as they contain  
16 sensitive personal information about non-parties to this litigation, including  
17 minors, as well as HIPAA protected patient information, and sensitive  
18 personal information of 3<sup>rd</sup> parties.

19 3. **SCOPE**

20 The protections conferred by this agreement cover not only confidential material (as  
21 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
22 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
23 conversations, or presentations by parties or their counsel that might reveal confidential material.

24 However, the protections conferred by this agreement do not cover information that is in  
25 the public domain or becomes part of the public domain through trial or otherwise.

1     4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2         4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
3 or produced by another party or by a non-party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
5 categories of persons and under the conditions described in this agreement. Confidential material  
6 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
7 that access is limited to the persons authorized under this agreement.

8         4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
9 by the court or permitted in writing by the designating party, a receiving party may disclose any  
10 confidential material only to:

11                 (a) the receiving party's counsel of record in this action, as well as employees  
12 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

13                 (b) the officers, directors, and employees (including in house counsel) of the  
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
15 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
16 designated;

17                 (c) experts and consultants to whom disclosure is reasonably necessary for this  
18 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

19                 (d) the court, court personnel, and court reporters and their staff;

20                 (e) copy or imaging services retained by counsel to assist in the duplication of  
21 confidential material, provided that counsel for the party retaining the copy or imaging service  
22 instructs the service not to disclose any confidential material to third parties and to immediately  
23 return all originals and copies of any confidential material;

24                 (f) during their depositions, witnesses in the action to whom disclosure is  
25 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
26 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
2 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
3 under this agreement;

4 (g) the author or recipient of a document containing the information or a  
5 custodian or other person who otherwise possessed or knew the information;

6 (h) any mediator retained by the parties in this matter.

7 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
8 referencing such material in court filings, the filing party shall confer with the designating party  
9 to determine whether the designating party will remove the confidential designation, whether the  
10 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
11 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards  
12 that will be applied when a party seeks permission from the court to file material under seal.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
15 or non-party that designates information or items for protection under this agreement must take  
16 care to limit any such designation to specific material that qualifies under the appropriate  
17 standards. The designating party must designate for protection only those parts of material,  
18 documents, items, or oral or written communications that qualify, so that other portions of the  
19 material, documents, items, or communications for which protection is not warranted are not swept  
20 unjustifiably within the ambit of this agreement.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
22 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
23 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
24 and burdens on other parties) expose the designating party to sanctions.

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1       If it comes to a designating party's attention that information or items that it designated for  
2 protection do not qualify for protection, the designating party must promptly notify all other parties  
3 that it is withdrawing the mistaken designation.

4           5.2     Manner and Timing of Designations. Except as otherwise provided in this  
5 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
6 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
7 be clearly so designated before or when the material is disclosed or produced.

8           (a)     Information in documentary form: (e.g., paper or electronic documents and  
9 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
10 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
11 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
12 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate  
13 markings in the margins).

14           (b)     Testimony given in deposition or in other pretrial proceedings: the parties  
15 and any participating non-parties must identify on the record, during the deposition or other pretrial  
16 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
17 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
18 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
19 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
20 at trial, the issue should be addressed during the pre-trial conference.

21           (c)     Other tangible items: the producing party must affix in a prominent place  
22 on the exterior of the container or containers in which the information or item is stored the word  
23 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
24 the producing party, to the extent practicable, shall identify the protected portion(s).

1       5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the designating party's  
3 right to secure protection under this agreement for such material. Upon timely correction of a  
4 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
5 in accordance with the provisions of this agreement.

6     6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

7       6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13       6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
14 regarding confidential designations without court involvement. Any motion regarding confidential  
15 designations or for a protective order must include a certification, in the motion or in a declaration  
16 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
17 affected parties in an effort to resolve the dispute without court action. The certification must list  
18 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
19 to-face meeting or a telephone conference.

20       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
21 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
22 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
24 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
25 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
26 the material in question as confidential until the court rules on the challenge.

1   7.    PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2   LITIGATION

3       If a party is served with a subpoena or a court order issued in other litigation that compels  
4   disclosure of any information or items designated in this action as "CONFIDENTIAL," that party  
5   must:

6             (a)    promptly notify the designating party in writing and include a copy of the  
7   subpoena or court order;

8             (b)    promptly notify in writing the party who caused the subpoena or order to  
9   issue in the other litigation that some or all of the material covered by the subpoena or order is  
10   subject to this agreement. Such notification shall include a copy of this agreement; and

11            (c)    cooperate with respect to all reasonable procedures sought to be pursued by  
12   the designating party whose confidential material may be affected.

13   8.    UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14       If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
15   material to any person or in any circumstance not authorized under this agreement, the receiving  
16   party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
17   (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
18   person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
19   and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be  
20   Bound" that is attached hereto as Exhibit A.

21   9.    NON TERMINATION AND RETURN OF DOCUMENTS

22       Within 60 days after the termination of this action, including all appeals, each receiving  
23   party must return all confidential material to the producing party, including all copies, extracts and  
24   summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
2 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
4 product, even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect until a  
6 designating party agrees otherwise in writing or a court orders otherwise.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
8

9 DATED: November 27, 2017

*/s/ David P. Roosa*

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15 DATED: November 27, 2017

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Attorneys for Defendant

21 PURSUANT TO STIPULATION, IT IS SO ORDERED  
22

23 DATED: Dec. 1, 2017

*Robert S. Lasnik*

24  
25 Hon. Robert S. Lasnik,  
26 United States District Court Judge

**EXHIBIT A**

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of \_\_\_\_\_ [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_